

SPECIAL CRIMINAL APPLICATION No 1136 of 1987

Hon'ble MR.JUSTICE S.D.PANDIT

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5. Whether it is to be circulated to the Civil Judge? No.

Versus

Appearance:

MR HN JHALA for Respondent No. 1, 2

Date of decision: 04/04/97

Present application is filed by the State of Gujarat as well as the Forest Department seeking to quash the order passed on 30.9.87 by the learned Addl. Sessions Judge, Junagadh in Cri.Appeal No. 42/86.

2. That on 9.12.85 on Rajkot Junagadh road, the

truck bearing No. GTX 4006 was detained by the Forest Officers and on search of the truck it was found that the truck was loaded with forest produce. Thereafter, proceedings under section 61-A was initiated against the owner of the truck and driver and others and the petitioner no.2 Deputy Conservator of Forest(Gir) Division by his order dated 7.10.86 had ordered to confiscate the said truck. Being aggrieved by the said decision, the respondents nos 1 and 2 had preferred the said appeal before the learned Sessions Judge as provided by the said Act. Said appeal was heard by the Addl. Sessions Judge and by his order dated 30.9.87 he reversed the order of petitioner no.2 and ordered to hand over the truck as well as the wood to the respondents.

3. Being aggrieved by the said decision the State as well as the Forest Department have come before this court. The main contention raised on behalf of the petitioners before this court is that the order in question passed on 30.9.87 is passed by the learned Addl.Sessions Judge, Junagadh who had no jurisdiction to hear and decide the said appeal. It is contended that under the provisions of section 61-A of the Indian Forest Act, the Sessions Judge is the appellate authority against the decision of the Conservator as a persona designata and not in his capacity as an Additional Sessions Judge. Therefore, the appeal preferred under the provisions of section section 61-A of the said Act is to be heard and decided by the Sessions Judge and he cannot make over the aside appeal to any Addl.Sessions Judge because he is not working as a Sessions Judge under the provisions of Cr.P.C. but he is an appellate authority as persona designata under the Indian Forests Act. This contention raised on behalf of the applicants has been considered by this court in the case of State of Gujarat vs. Siddik Haji Ibrahim Patel 1996(1) (37)(1) GLR 798 and the learned single Judge(Honourable H.R.Shelat.J) of this Court has held that the appeal preferred under section 66-D of the Indian Forests Act is to be heard by the Sessions Judge alone and he cannot make over the said appeal to any of his Addl. Sessions Judges or Assistant Judges as Addl. Sessions Judge/Assistant Judge has no jurisdiction to hear and decide the said appeal. I have no reason to differ with the view taken by the learned single Judge of this Court in the said case. I therefore, hold that on this short ground the order in question will have to be set aside and the matter will have to be remanded to the learned Sessions Judge, Junagadh to hear the said appeal afresh according to law. Thus the present petition is allowed. The order passed by the learned Addl.Sessions Judge on

30.9.87 in Cri. Appeal No. 42/86 on the file of the learned Sessions Judge, Junagadh is hereby quashed and set aside and the matter is restored to file. The learned Sessions Judge is directed to hear and dispose of the said appeal according to law as early as possible . Rule made absolute.

(S.D.Pandit.J)